

August 20, 1996

AGAR ADVISORY

**PROCUREMENT AND PROPERTY MANAGEMENT
PROCUREMENT POLICY DIVISION
AGAR ADVISORY NO. 2**

INTRODUCTION: This Agriculture Acquisition Regulation (AGAR) Advisory contains information regarding changes made by the Debt Collection Improvement Act of 1996 (Public Law 104-134, Chapter 10, Section 31001). Readers of this advisory should take note that action dates are included which have already passed. The statute contains an implementation date of July 26, 1996. The Department of Treasury interim regulations were published on that date. The Federal Acquisition Regulation (FAR) rules are not yet published. Information on the changes needed to comply with this statute is being distributed as it becomes available.

If you have questions about this advisory, please contact J. R. Holcombe Jr. by e-mail at RHOLCOMBE@USDA.GOV, telephone at (202) 720-8484, or fax at (202) 720-8972.

ACTION: Contracting Officers shall include the clause found at FAR 52.232-28 in each solicitation issued after July 25, 1996. If the clause was not included and the opportunity to do so remains available, the solicitation should be amended to include the clause. The clause should be included in purchase orders offered to vendors after July 25, 1996. For purchase orders which did not include the clause, the Contracting Officer should consider a modification only if the purchase order has an extended period of performance. It is not necessary to modify contracts, including purchase orders awarded before July 26, 1996.

SUMMARY: On April 26, 1996, the President signed Public Law 104-134. Of the many changes made by this new law, several apply directly to acquisitions. A new requirement for data collection prior to payments was established. Electronic funds transfer (EFT) is now the expected method for payment of amounts due. Also, the amounts of civil monetary penalties to be charged to vendors will be adjusted and indexed to inflation.

SPECIFIC ISSUES:

- ▶ *APPLICABILITY OF THESE CHANGES.* The requirement to make payment by EFT applies to solicitations issued after July 25, 1996 and actions under FAR Parts 12 and 13.
- ▶ *REGULATIONS TO BE ISSUED.* Each change established in this law must be implemented by regulation issued by the appropriate Federal agency. The Department of Treasury will issue final regulations governing the EFT and debt collection provisions. The Department of Labor will regulate the civil penalty levied under the Contract Work Hours and Safety Standards Act (CWHSSA). The Federal Acquisition Regulation (FAR) will implement the necessary instructions and clauses to carry out these actions.
- ▶ *EFT PAYMENTS.* Effective October 26, 1996, EFT will be the expected method of payment by Federal agencies (including Federal corporations). Salary payments, financial assistance payments, loans, and contract payments will be made by EFT. EFT is defined in a way to include payment by debit or credit card.
- ▶ *WAIVER AUTHORITY.* The head of a Federal agency will waive the requirement for payment by EFT after receipt of a written certification in which the intended recipient states that it does not have an account with a financial institution or an authorized financial agent. This waiver authority expires January 1, 1999.
- ▶ *COLLECTION OF TAXPAYER IDENTIFICATION NUMBERS (TIN).* In order to improve the collection of debts owed to the United States, each individual or entity doing business with a Federal agency must furnish their TIN. It is anticipated that the number will be required on each invoice or other demand for payment. Each agency must disclose to that individual or entity the intent of the agency to use the TIN for purposes of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. It is not yet known how this disclosure will be announced.
- ▶ *INCREASE IN CIVIL PENALTIES.* A wide variety of civil penalties will be indexed to inflation. The first adjustment will occur by October 26, 1996 with future adjustments to occur on a cycle not to exceed four years. One civil penalty to be

adjusted impacts acquisitions. The "liquidated damages" of \$10 per day per violation under the CWHSSA will be adjusted for violations occurring after the adjustment date.

- ▶ *ACQUISITION OF COMMERCIAL ITEMS.* The clause at FAR 52.232-28 may be used for commercial item solicitations. EFT is considered a standard commercial practice. This is not considered to be a tailoring of the payment provisions at FAR 52.212-4(i).

EXPIRATION DATE: This advisory expires 120 calendar days from the date of issuance.

[END]

Distribution Code: 50

